
(2004) 01 AP CK 0044
In the Andhra Pradesh High Court
Case No : Writ Petition No. 16283 of 2003

S.V. Sudhakara Rao

APPELLANT

Vs

State of A.P. and Another

RESPONDENT

Date of Decision : 19-01-2004

Acts Referred:

Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987
— Section 15, 154

Citation : (2004) 2 ALD 302 : (2004) 3 ALT 503

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : P. Yadagir Rao, for the Appellant; Government Pleader for Endowments, for the Respondent

Final Decision : Dismissed

Judgement

V.V.S. Rao, J.—The petitioner invokes the jurisdiction of this Court under Article 226 of the Constitution of India to challenge Memorandum issued by Government of A.P. bearing Memo No. 66190/Endts.IV(2)/2002-2 dated 17.1.2003 whereby and whereunder the representation made by the petitioner dated 27.8.2002 seeking exemption from the operation of provisions of Section 15 of the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 ("Act" for brevity) was rejected by Government of A.P., first respondent herein.

2. The facts giving rise to this writ petition in brief are as follows. Sri Venkateswara Swamy Devasthanam, Dwaraka Tirumala, West Godavari District is a religious institution governed by the provisions of Act. The petitioner belongs to "Suraneni" family, ex-jamindars of Mylavaram Estate. The petitioner claims that Government recognized members of Suraneni family of Mylavaram as hereditary trustees of Sri Venkateswara Swamy Devasthanam, Dwaraka Tirumala. By proceedings dated 7.6.1989, it is alleged that petitioner was also recognized as a member of founders" family along with three others belonging to other branch of Suraneni family. Government vide their orders in G.O. Ms. No. 487 dated

31.6.1996 appointed petitioner and three others and an Executive Officer as a Special Authority to manage the affairs of Devasthanam.

3. The petitioner claims that after the death of his father, he was recognized as hereditary trustee and he strived hard for the development of Devasthanam without any complaint from any quarter. The income of the Temple increased ten fold in 2001-2002 and under him developmental works costing about Rs. 3.10 lakhs were taken up. The petitioner and other members of the family filed an application on 27.8.2002 seeking exemption of Temple from the operation of Section 15 of the Act. The petitioner alleges that first respondent sent application to second respondent and second respondent by letter dated 17.2.2003 addressed to the Special Officer of Devasthanam communicated the orders of Government dated 17.1.2003 rejecting the application for exemption, which is assailed.

4. The learned Counsel for petitioner Sri P. Yadgir Rao contends that Government have failed to exercise the power vested in them u/s 154 of the Act. It is his submission that Government failed to consider various grounds under which exemption u/s 154 was sought. It is his contention that Dwaraka Tirumala Temple is being administered by petitioner and other members of founders family to the satisfaction of one and all and therefore it is a fit case for exemption from the provisions of Section 15 of the Act. Be it noted that if the Government exempts Dwaraka Tirumala Temple from the provisions of Section 15 of the Act, there would not be any necessity to appoint a Board of non-hereditary trustee to manage the affairs of temple. He also contends that when the exemption application is rejected, Government is bound to give reasons and failure to do so vitiates impugned order. The impugned order is not even communicated to the petitioner which is improper. The learned Counsel also made a submission that the Commissioner of Endowments vide his report dated 25.11.2002 also recommended to the Government of A.P. to exempt Dwaraka Tirumala Temple from the provisions of the Act. The learned Counsel places reliance on the Division Bench judgment of this Court in Hitakarini Samaj, Rajahmundry v. State of A.P. 1995 (5) ALD 324 (DB). The learned Assistant Government Pleader Sri Venkatadri opposes the writ petition and contends that Government passed impugned order rejecting the request of petitioner for exemption keeping in view the objects of the Act and the same is in accordance with the provisions of the Act.

5. The statement of objects and reasons accompanying Legislative Bill, which was enacted as an Act No. 30 of 1987 shows that after receiving representations from the general public regarding functioning of Charitable and Hindu Religious Institutions, Government constituted a Commission headed by Retired Chief Justice of High Court of A.P. Shri Challa Kondaiah to review and suggest measures for better management of institutions and endowments including Tirumala Tirupathi Devasthanam. The Commission submitted a report on 28.2.1996 recommending abolition of Hereditary Rights of Archakas, Myrasidars

and other servants and steps to be taken for providing better management of properties and utilisation of funds. The Commission also recommended for abolition Hereditary system of Trusteeship and entrustment of management of Temple to the Board of non-Hereditary Trustees. The Commission also made other recommendations regarding lands and leases of lands. Government accepted the recommendations of Commission with certain modifications. Having felt that implementation of recommendations of Justice Kondaiah Commission require modification of the provisions of various Acts and so as to consolidate and amend the law relating to administration and governance of Charitable and Hindu Religious Institutions, enacted Act No. 30 of 1987 repealing earlier Act of 1966 on the subject of Charitable and Hindu Religious Institutions.

6. By sub-section (3) of Section 1, the Act was made applicable to Hindu Religious Institutions and Public Charitable Institutions whether or not registered in accordance with the Act. Section 16 of the Act, abolished the rights of a person for the office of Hereditary Trustee or Dharmakartha and by Section 14, all properties belonging to Religious Institution are vested in the Institution or Endowment which shall be governed by a Board of non-Hereditary Trustees appointed as per Section 15 exercising powers and duties under Sections 23 and 24 of the Act. Section 15 of the Act deals with appointment of Board of Trustees. If the income of the Temple or an Institution exceeds Rs. 10.00 lakhs, it is the Government which is competent to appoint Board of Trustees consisting of nine persons, if the income does not exceed Rs. 10.00 lakhs, it is the Commissioner who shall appoint the Board of Trustees consisting of five persons. If the income of the Temple does not exceed Rs. 5.00 lakhs, it is the Deputy Commissioner and the income does not exceed Rs. 0.50 lakhs, it is the Assistant Commissioner who were appointing authorities. Whatever be the classification of Temple, by reason of Sections 14,15 and 23, administration, affairs and management of properties of Temple shall have to be entrusted to the Board of non-hereditary trustees. Section 154 of the Act confers powers on the State Government to exempt from the operation of any provisions of Act or any rules made thereunder in Charitable Institution or Endowment. Section 154 of the Act reads as under:

154. Exemptions :--The Government may by notification, exempt from the operation of any of the provisions of this Act or any of the rules made thereunder,--

(a) any charitable institution or endowment the administration of which was or is for the time being vested--

(i) in the Government either directly or through a Committee or Treasurer of Endowments, appointed for the purpose.

(ii) in the official Trustee or in the Administrator General.

(b) any charitable institution or endowment founded for educational purpose or for providing medical relief; or

- (c) any institution or endowment which is being well managed by the founder; or
- (d) any institution or endowment; and may likewise vary or cancel such exemption.

7. The power of Government to exempt from the operation of any of the provisions of the Act or Rules is available in respect of four types of institutions. These are:

- (a) Any Charitable Institution or Endowment, the administration of which was or is being vested in the Government or official trustee or in the administrator general;
- (b) A Charitable Institution or Endowment founded for the purpose of education or for providing medical relief;
- (c) Any institution or endowment which is being well managed by the founder; and
- (d) Any institution or endowment.

8. "Charitable Endowment" is defined in Section 2(3), as to mean all property given or endowed for any charitable purpose. Likewise "charitable institution" is defined in Section 2(4), as to mean any establishment, undertaking organization or association formed for charitable purpose and includes a specific endowment or dharmaadayam. Section 2(23) defines a "religious institution", to mean mutt, temple or specific endowment and includes brindavan samadhi or any other institution established or maintained for religious purpose. Therefore Section 154(a) and (b) have no application to the petitioner institution. Section 154(c) and (d) refer to institution or endowment. As the word "institution" is common for a charitable organization or religious place, it is reasonable to infer that Section 154(c) and (d) also apply to a religious institution as well. If a religious institution is being well managed, it is open to Government in their discretion to exempt such religious institution from the operation of provisions of the Act.

9. It is submitted that when a religious institution is well managed by the founders, it should be exempted from the provisions of the Act. I am afraid I cannot agree with the submission of learned Counsel for petitioner. The power to exempt or the power to relax the provisions of an enactment given to the executive as an extraordinary power which is to be exercised in tune with the objects for which legislature enacted the statute.

10. In P.J. Irani Vs. The State of Madras, , a Constitution Bench considered the scope and power to relax/ exempt in relation to Section 13 of Madras Buildings (Lease and Rent Control) Act, 1949. It was held as under:

The entire basis for upholding the constitutional validity of Section 13 of the Act and considering that it did not offend the equal protection of the law guaranteed by Article 14 of the Constitution was, that the discretion or the power conferred upon Government was not unguided, uncanalised or arbitrary but that it had to

be exercised in accordance with the policy and object of the enactment gatherable from the preamble as well as its operative provisions. The order itself might on its face have shown that it conformed to this requirement, in which event it would have been for the party challenging the validity of the order to establish to the satisfaction of the Court that it was mala fide or had been passed on grounds not contemplated by or extraneous to, the object and purpose of the enactment or the principles which should have governed the exercise of the power. For instance, if the exemption had been in favour of a particular class of buildings, say those belonging to charities -religious or secular - the classification would have been apparent in the very order of exemption. Where, however, the exemption granted is not of any class of buildings which would ex facie disclose a classification, but the exemption is of a specified building owned by A or in which B is a tenant, men prima facie it would be discriminatory and when the legality of the order is challenged, its intra vires character could be sustained only by disclosing the reasons which led to the passing of the order.

11. In *The Consumer Action Group and Another Vs. State of Tamil Nadu and Others*, , the Supreme Court considered this aspect of the matter in the background of Section 113 of the Tamil Nadu Town and Country Planning Act, 1972 which conferred power on the Government to exempt any land or building from all or any provision of the said Act. After referring to earlier leading authorities on the subject in *Sardar Inder Singh Vs. The State of Rajasthan*, , P.J. Irani *Vs. The State of Madras*, , *The Registrar of Co-operative Societies, Trivandrum and Another Vs. K. Kunjabmu and Others*, , A.N. Parasuraman *Etc. Vs. State of Tamil Nadu*, , *Premium Granites and Another Vs. State of Tamil Nadu and Others*, ; and *Mahe Beach Trading Co. and Others Vs. Union Territory of Pondicherry and Others*, , the Supreme Court observed that when wide power is vested in the Government, it has to be exercised with great circumspection. While exercising such power, the authority has to keep in mind the purpose and policy of the Act and resultant effect of such grant on public and individual. It is apt to quote the following from the judgment.

..... So long it does not materially effect the public cause, the grant would be to eliminate individual hardship which would be within the permissible limit of the exercise of power. But where it erodes the public safety, public convenience, public health etc., the exercise of power could not be for the furtherance of the purpose of the Act. Minor abrasion here and there to eliminate greater hardship, may be in a given case, be justified but in no case affecting the public at large. So every time Government exercises its power it has to examine and balance this before exercising such a power. Even Otherwise every individual right including fundamental right is within reasonable limit but if it inroads public rights leading to public in conveniences it has to be curtailed to that extent. So no exemption should be granted effecting public at large. Various development rules and restrictions under it are made to ward off possible public inconvenience and safety. Thus, whenever any power is to be exercised, Government must keep in mind, whether such a grant would recoil on public or not and to what extent. If

it does then exemption is to be re/used. If the effect is marginal compared to the hardship of an individual that may be considered for granting

12. The Act was preceded by an elaborate study by Justice Challa Kondaiah Commission which categorically recommended for abolition of Hereditary Trusteeship and appointment of Board of Trustees with non-hereditary trustees. This was done with a view to release the religious institution from the clutches of hereditary trustees who converted the holy places into their fiefdom and resorted to satanic deeds. The power vested in the Government u/s 154 must be exercised keeping in view this object, notwithstanding that a religious institution is being managed well. Further Section 154(c) refers to a religious institution which is being well managed by the founders. It does not enable a member of the founders family to seek exemption under the said provision. In my considered opinion, the term "founders" used in Section 154(c) does not include a member or members of founders family.

13. The learned Counsel for petitioner also invited attention of this Court to the decision of the Supreme Court in Pannalal Bansilal Patil and others etc. Vs. State of Andhra Pradesh and another, . In the said case, the Supreme Court inter alia upheld the constitutional validity of Section 16 (abolition of hereditary trusteeship) and observed that hardship caused to the hereditary trustees who are supposed to evince greater and keener interest in the temple, can be mitigating by appointing a member of the founders family to the Board of Trustees and making him Chairman. The learned Counsel contends that as the Supreme Court recognized the importance of founders, the temple should be exempted from the provisions of Section 15 of the Act. I fail to understand as to how the observations made by the Supreme Court in Bansilal Patil's case (supra) can be understood, the way the learned Counsel suggests. Merely because a member of founders family can be appointed as a member of Board of Trustees, the same would not confer any right on such person to seek exemption from Section 15 of the Act. The Supreme Court only observed that a member of founders family should be appointed to Board of Trustees, but never suggested to exclude those temples from the purview of the Act, though in the subsequent decision in A.S. Narayana Deekshitulu etc. Vs. State of Andhra Pradesh and others, , the Supreme Court suggested that where the income of Temples classified under sub-section (c) falls below certain amount, they may be exempted from the provisions of the Act.

14. The learned Counsel for petitioner relied on the Division Bench judgment of this Court in Hitakarini Samaj (supra) in support of the contention that the State is expected to exercise its power u/s 154 in tune with the objects of the case. The Division Bench observed as under:

The Commissioner of Endowments, who is a statutory functionary operating under the Legislative Dicta of the provisions of the Act is ordained to exercise his powers in accordance with the text and structure of the Act in order to advance the purposes of the Legislation, in particular such of those provisions which are

meant to preserve, protect and regulate the properties and management of a public charitable institution. No promise of the Government could subvert this Legislative position nor disable the Commissioner of Endowments nor even the Government itself from performing its legitimate role in obedience to the commands of the Legislation. The gross mismanagement of the affairs of the institution by the private management is amply recorded and to grant exemption from the provisions of the Act and restore the management of the public charitable institutions into such hands would be a gross subversion of public policy and of public interest.

15. The Division Bench also observed that preponderating public interest ordains that no exemption be granted to the private management from the operation of provisions of the Act. Therefore the judgment of the Division Bench is of no assistance to the learned Counsel for petitioner.

16. It is lastly contended that the impugned order must be meted with invalidation for non-disclosure of reasons. This contention is misconceived. When the power to exempt is exercised, it is no doubt true, the Government is required to record reasons. But when the exemption is refused or rejected, no reasons are required to be recorded nor such reasons are to be communicated to a person who seeks exemption. In *Sri Sarvaraya Sugars Limited Vs. Government of A.P. and Others*, I considered this aspect of the matter in the context of exemption power u/s 20 of Urban Land (Ceiling and Regulation) Act, 1976. After referring to the decisions of Supreme Court in *S.N. Mukherjee Vs. Union of India*, *Union of India and others Vs. E.G. Nambudiri*, and *T.R. Thandur Vs. Union of India (UOI) and Others*, I laid down as under:

Needless to point out that u/s 20(1)(a) of the Act an applicant is not entitled to know the reasons for rejection and there is no obligation on the part of the first respondent to communicate reasons. Even otherwise, after perusing the impugned order, I am satisfied that the same discloses sufficient reasons when the Government said that they see no reason to comply with the request to grant exemption u/s 20(1)(a) of the Act. Be it noted that Section 20 of the Act, as held in *Maharao Sahib Shri Bhim Singhji Ors. Vs. Union of India (UOI) and Others*, itself contains sufficient guidelines for granting exemption and the same would be sufficient reason.

In *T.R. Thandur's* case (supra) on which reliance is placed by the learned Counsel for the petitioner, the question as to whether the Government can arbitrarily exercise the power u/s 20(1)(a) of the Act while granting exemption even though the applicant has not made out any case for exemption under the said provisions was dealt with. In that context the Supreme Court held that while granting exemption, there should be sufficient reasons for the Government to exercise the power under the Act having regard to the purpose for which the Act was enacted. The Supreme Court ruled thus:

Clause (a) of sub-section (1) of Section 20 empowers the State Government to

grant the exemption if it is satisfied having regard to the relevant factors specified in the clause that it is necessary or expedient to grant the exemption in the "public interest" subject to the conditions specified in the order. Clause (a) specifies certain relevant factors for the purpose of grant of exemption namely, "location of such land, "the purpose for which such land is being or is proposed to be used" and such other relevant factors as the circumstances of the case may require. Apart from the location of the excess vacant land and the purpose of its use, regard must be had to the other relevant factors, which is a question of fact in each case. However, these factors must indicate that the grant of exemption under Clause (a) is necessary or expedient in the "public interest" has a legal connotation. The broad guidelines for grant of exemption under Clause (a) are enacted in the provision. A safeguard is provided by requiring conditions to be specified in the order to which the exemption is granted under Clause (a). Even though there is no proviso in Clause (a) of the kind enacted thereafter in Clause (b), yet the absence of such a proviso is inconsequential since the requirement of the expressly enacted proviso in Clause (b) is implicit in the manner of exercise of the power under Clause (a). The requirement in Clause (a) of making an order having regard to the specified relevant circumstances and specifying conditions attached to the exemption, ensures that the decision is reached for cogent reasons which are placed on record in writing culminating in the making of the written order. There is no scope for the view that exemption can be granted under Clause (a) by an order specifying the conditions having regard to the specified relevant factors without recording the reasons for doing so in writing. Every State action must satisfy the rule of non-arbitrariness and, therefore, recording of reasons in writing for granting the exemption under Clause (a) indicating that it is necessary or expedient in the public interest so to do, is an essential requirement of valid exercise of power under Clause (a). This is how Clause (a) must be construed and understood

17. Admittedly, Sri Venkateshwara Swamy Temple, Dwaraka Tirumala, West Godavari District is the important Temple in Andhra Pradesh after Tirumala Tirupathi Devasthanam, dedicated to Lord Sri Venkateshwara Swamy. Millions of pilgrims and devotees visit the Temple every year. Public interest lies in entrusting to a Board of Trustees and to an Executive Officer of the Department of Endowments than totally entrusting it to the members of founders family. Even if the Commissioner recommended for exemption, as alleged, as the Government is repository of exemption power, nothing prevents the Government to overrule the recommendations of Commissioner and reject the request for exemption. The impugned order is unassailable especially in view of the fact that petitioner has no right, much less enforceable right to seek exemption u/s 154 of the Act.

18. The writ petition is misconceived and is accordingly dismissed. There shall be no order as to costs.